

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1188

Introduced by Assembly Member Pan

February 18, 2011

~~An act to amend Section 48200 of the Education Code, relating to pupils.~~ *An act to amend Sections 667.5 and 1192.7 of the Penal Code, relating to crimes.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1188, as amended, Pan. ~~Pupils: attendance.~~ *Crimes: serious and violent felonies.*

Existing law, as added by Proposition 8, an initiative act known as the Victims' Bill of Rights Act, among other things, defines a serious felony. Existing law, as amended by Proposition 21, another initiative act, further defines a violent felony. Under existing law, a person who is convicted of or who has a prior conviction for a serious or violent felony is subject to additional years of imprisonment in the state prison, as specified. The Legislature may amend either of those initiative acts by a statute passed in each house by a $\frac{2}{3}$ vote, or by a statute that becomes effective only when approved by the voters.

This bill would include, within the definition of a violent felony, crimes related to the willful harm or injury to a child, assault resulting in death of a child under 8 years of age, and cruel or inhuman corporal punishment of a child, as specified. The bill would include, within the definition of serious felony, the crimes noted above as well as human trafficking and luring or transporting a minor away from the minor's home without consent. Because this bill would amend those initiative acts described above, it would require a $\frac{2}{3}$ vote. Because the bill would

impose additional duties on local prosecutors, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires each person who is between 6 and 18 years of age, who is otherwise not exempted, to attend full-time day school, continuation school, or classes.~~

~~This bill would make several technical, nonsubstantive changes to this provision.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: ~~no~~^{yes}.

The people of the State of California do enact as follows:

1 SECTION 1. Section 667.5 of the Penal Code, as amended by
2 Section 63 of Chapter 178 of the Statutes of 2010, is amended to
3 read:

4 667.5. Enhancement of prison terms for new offenses because
5 of prior prison terms shall be imposed as follows:

6 (a) Where one of the new offenses is one of the violent felonies
7 specified in subdivision (c), in addition to and consecutive to any
8 other prison terms therefor, the court shall impose a three-year
9 term for each prior separate prison term served by the defendant
10 where the prior offense was one of the violent felonies specified
11 in subdivision (c). However, no additional term shall be imposed
12 under this subdivision for any prison term served prior to a period
13 of 10 years in which the defendant remained free of both prison
14 custody and the commission of an offense which results in a felony
15 conviction.

16 (b) Except where subdivision (a) applies, where the new offense
17 is any felony for which a prison sentence is imposed, in addition
18 and consecutive to any other prison terms therefor, the court shall
19 impose a one-year term for each prior separate prison term served
20 for any felony; provided that no additional term shall be imposed
21 under this subdivision for any prison term served prior to a period
22 of five years in which the defendant remained free of both prison

1 custody and the commission of an offense which results in a felony
2 conviction.

3 (c) *The Legislature finds and declares that the specified crimes*
4 *of violence against persons in this subdivision merit special*
5 *consideration when imposing a sentence to display society's*
6 *condemnation for these extraordinary crimes.* For the purpose of
7 this section, "violent felony" shall mean any of the following:

8 (1) Murder or voluntary manslaughter.

9 (2) Mayhem.

10 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
11 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section
12 262.

13 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.

14 (5) Oral copulation as defined in subdivision (c) or (d) of Section
15 288a.

16 (6) Lewd or lascivious act as defined in subdivision (a) or (b)
17 of Section 288.

18 (7) Any felony punishable by death or imprisonment in the state
19 prison for life.

20 (8) Any felony in which the defendant inflicts great bodily injury
21 on any person other than an accomplice which has been charged
22 and proved as provided for in Section 12022.7, 12022.8, or 12022.9
23 on or after July 1, 1977, or as specified prior to July 1, 1977, in
24 Sections 213, 264, and 461, or any felony in which the defendant
25 uses a firearm which use has been charged and proved as provided
26 in subdivision (a) of Section 12022.3, or Section 12022.5 or
27 12022.55.

28 (9) Any robbery.

29 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

30 (11) Sexual penetration as defined in subdivision (a) or (j) of
31 Section 289.

32 (12) Attempted murder.

33 (13) A violation of Section 18745, 18750, or 18755.

34 (14) Kidnapping.

35 (15) Assault with the intent to commit a specified felony, in
36 violation of Section 220.

37 (16) Continuous sexual abuse of a child, in violation of Section
38 288.5.

39 (17) Carjacking, as defined in subdivision (a) of Section 215.

1 (18) Rape, spousal rape, or sexual penetration, in concert, in
2 violation of Section 264.1.

3 (19) Extortion, as defined in Section 518, which would constitute
4 a felony violation of Section 186.22 of the Penal Code.

5 (20) Threats to victims or witnesses, as defined in Section 136.1,
6 which would constitute a felony violation of Section 186.22 of the
7 Penal Code.

8 (21) Any burglary of the first degree, as defined in subdivision
9 (a) of Section 460, wherein it is charged and proved that another
10 person, other than an accomplice, was present in the residence
11 during the commission of the burglary.

12 (22) Any violation of Section 12022.53.

13 (23) A violation of subdivision (b) or (c) of Section 11418. ~~The~~
14 ~~Legislature finds and declares that these specified crimes merit~~
15 ~~special consideration when imposing a sentence to display society's~~
16 ~~condemnation for these extraordinary crimes of violence against~~
17 ~~the person.~~

18 (24) *Willful harm or injury to a child likely to produce great*
19 *bodily injury or death, in violation of Section 273a.*

20 (25) *Assault resulting in death of a child under eight years of*
21 *age, in violation of Section 273ab.*

22 (26) *Cruel or inhuman corporal punishment of a child, in*
23 *violation of Section 273d.*

24 (d) For the purposes of this section, the defendant shall be
25 deemed to remain in prison custody for an offense until the official
26 discharge from custody or until release on parole, whichever first
27 occurs, including any time during which the defendant remains
28 subject to reimprisonment for escape from custody or is
29 reimprisoned on revocation of parole. The additional penalties
30 provided for prior prison terms shall not be imposed unless they
31 are charged and admitted or found true in the action for the new
32 offense.

33 (e) The additional penalties provided for prior prison terms shall
34 not be imposed for any felony for which the defendant did not
35 serve a prior separate term in state prison.

36 (f) A prior conviction of a felony shall include a conviction in
37 another jurisdiction for an offense which, if committed in
38 California, is punishable by imprisonment in the state prison if the
39 defendant served one year or more in prison for the offense in the
40 other jurisdiction. A prior conviction of a particular felony shall

1 include a conviction in another jurisdiction for an offense which
2 includes all of the elements of the particular felony as defined
3 under California law if the defendant served one year or more in
4 prison for the offense in the other jurisdiction.

5 (g) A prior separate prison term for the purposes of this section
6 shall mean a continuous completed period of prison incarceration
7 imposed for the particular offense alone or in combination with
8 concurrent or consecutive sentences for other crimes, including
9 any reimprisonment on revocation of parole which is not
10 accompanied by a new commitment to prison, and including any
11 reimprisonment after an escape from incarceration.

12 (h) Serving a prison term includes any confinement time in any
13 state prison or federal penal institution as punishment for
14 commission of an offense, including confinement in a hospital or
15 other institution or facility credited as service of prison time in the
16 jurisdiction of the confinement.

17 (i) For the purposes of this section, a commitment to the State
18 Department of Mental Health as a mentally disordered sex offender
19 following a conviction of a felony, which commitment exceeds
20 one year in duration, shall be deemed a prior prison term.

21 (j) For the purposes of this section, when a person subject to
22 the custody, control, and discipline of the Director of Corrections
23 is incarcerated at a facility operated by the Department of the Youth
24 Authority, that incarceration shall be deemed to be a term served
25 in state prison.

26 (k) Notwithstanding subdivisions (d) and (g) or any other
27 provision of law, where one of the new offenses is committed
28 while the defendant is temporarily removed from prison pursuant
29 to Section 2690 or while the defendant is transferred to a
30 community facility pursuant to Section 3416, 6253, or 6263, or
31 while the defendant is on furlough pursuant to Section 6254, the
32 defendant shall be subject to the full enhancements provided for
33 in this section.

34 This subdivision shall not apply when a full, separate, and
35 consecutive term is imposed pursuant to any other provision of
36 law.

37 *SEC. 2. Section 1192.7 of the Penal Code, as amended by*
38 *Section 73 of Chapter 178 of the Statutes of 2010, is amended to*
39 *read:*

1192.7. (a) (1) It is the intent of the Legislature that district attorneys prosecute violent sex crimes under statutes that provide sentencing under a “one strike,” “three strikes” or habitual sex offender statute instead of engaging in plea bargaining over those offenses.

(2) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people’s case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(3) If the indictment or information charges the defendant with a violent sex crime, as listed in subdivision (c) of Section 667.61, that could be prosecuted under Sections 269, 288.7, subdivisions (b) through (i) of Section 667, Section 667.61, or 667.71, plea bargaining is prohibited unless there is insufficient evidence to prove the people’s case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence. At the time of presenting the agreement to the court, the district attorney shall state on the record why a sentence under one of those sections was not sought.

(b) As used in this section “plea bargaining” means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, “serious felony” means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6)

1 lewd or lascivious act on a child under 14 years of age; (7) any
2 felony punishable by death or imprisonment in the state prison for
3 life; (8) any felony in which the defendant personally inflicts great
4 bodily injury on any person, other than an accomplice, or any
5 felony in which the defendant personally uses a firearm; (9)
6 attempted murder; (10) assault with intent to commit rape or
7 robbery; (11) assault with a deadly weapon or instrument on a
8 peace officer; (12) assault by a life prisoner on a noninmate; (13)
9 assault with a deadly weapon by an inmate; (14) arson; (15)
10 exploding a destructive device or any explosive with intent to
11 injure; (16) exploding a destructive device or any explosive causing
12 bodily injury, great bodily injury, or mayhem; (17) exploding a
13 destructive device or any explosive with intent to murder; (18) any
14 burglary of the first degree; (19) robbery or bank robbery; (20)
15 kidnapping; (21) holding of a hostage by a person confined in a
16 state prison; (22) attempt to commit a felony punishable by death
17 or imprisonment in the state prison for life; (23) any felony in
18 which the defendant personally used a dangerous or deadly weapon;
19 (24) selling, furnishing, administering, giving, or offering to sell,
20 furnish, administer, or give to a minor any heroin, cocaine,
21 phencyclidine (PCP), or any methamphetamine-related drug, as
22 described in paragraph (2) of subdivision (d) of Section 11055 of
23 the Health and Safety Code, or any of the precursors of
24 methamphetamines, as described in subparagraph (A) of paragraph
25 (1) of subdivision (f) of Section 11055 or subdivision (a) of Section
26 11100 of the Health and Safety Code; (25) any violation of
27 subdivision (a) of Section 289 where the act is accomplished
28 against the victim's will by force, violence, duress, menace, or
29 fear of immediate and unlawful bodily injury on the victim or
30 another person; (26) grand theft involving a firearm; (27)
31 carjacking; (28) any felony offense, which would also constitute
32 a felony violation of Section 186.22; (29) assault with the intent
33 to commit mayhem, rape, sodomy, or oral copulation, in violation
34 of Section 220; (30) throwing acid or flammable substances, in
35 violation of Section 244; (31) assault with a deadly weapon,
36 firearm, machinegun, assault weapon, or semiautomatic firearm
37 or assault on a peace officer or firefighter, in violation of Section
38 245; (32) assault with a deadly weapon against a public transit
39 employee, custodial officer, or school employee, in violation of
40 Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at an

1 inhabited dwelling, vehicle, or aircraft, in violation of Section 246;
2 (34) commission of rape or sexual penetration in concert with
3 another person, in violation of Section 264.1; (35) continuous
4 sexual abuse of a child, in violation of Section 288.5; (36) shooting
5 from a vehicle, in violation of subdivision (c) or (d) of Section
6 26100; (37) intimidation of victims or witnesses, in violation of
7 Section 136.1; (38) criminal threats, in violation of Section 422;
8 (39) any attempt to commit a crime listed in this subdivision other
9 than an assault; (40) any violation of Section 12022.53; (41) a
10 violation of subdivision (b) or (c) of Section 11418; ~~and (42) (42)~~
11 *human trafficking, in violation of Section 236.1; (43) persuading,*
12 *luring, or transporting a minor under 14 years of age, in violation*
13 *of subdivision (b) of Section 272; (44) willful harm or injury to a*
14 *child likely to produce great bodily injury or death, in violation*
15 *of Section 273a; (45) assault resulting in death of a child under*
16 *eight years of age, in violation of Section 273ab; (46) cruel or*
17 *inhuman corporal punishment of a child, in violation of Section*
18 *273d; and (47) any conspiracy to commit an offense described in*
19 *this subdivision.*

20 (d) As used in this section, “bank robbery” means to take or
21 attempt to take, by force or violence, or by intimidation from the
22 person or presence of another any property or money or any other
23 thing of value belonging to, or in the care, custody, control,
24 management, or possession of, any bank, credit union, or any
25 savings and loan association.

26 As used in this subdivision, the following terms have the
27 following meanings:

28 (1) “Bank” means any member of the Federal Reserve System,
29 and any bank, banking association, trust company, savings bank,
30 or other banking institution organized or operating under the laws
31 of the United States, and any bank the deposits of which are insured
32 by the Federal Deposit Insurance Corporation.

33 (2) “Savings and loan association” means any federal savings
34 and loan association and any “insured institution” as defined in
35 Section 401 of the National Housing Act, as amended, and any
36 federal credit union as defined in Section 2 of the Federal Credit
37 Union Act.

38 (3) “Credit union” means any federal credit union and any
39 state-chartered credit union the accounts of which are insured by
40 the Administrator of the National Credit Union administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SECTION 1. Section 48200 of the Education Code is amended to read:~~

~~48200. Every person between the ages of 6 and 18 years not exempted under the provisions of this chapter or Chapter 3 (commencing with Section 48400) is subject to compulsory full-time education. Every person subject to compulsory full-time education and every person subject to compulsory continuation education not exempted under the provisions of Chapter 3 (commencing with Section 48400) shall attend the public full-time day school, continuation school, or classes for the full time designated as the length of the schoolday by the governing board of the school district in which the residency of either the pupil's parent or legal guardian is located and every parent, guardian, or other person having control or charge of the pupil shall send the pupil to the public full-time day school, continuation school, or classes for the full time designated as the length of the schoolday by the governing board of the school district in which the residence of either the parent or legal guardian is located.~~

~~Unless otherwise provided for in this code, a pupil shall not be enrolled for less than the minimum schoolday established by law.~~